



**SUPREME COURT OF CANADA**

**CITATION:** R. v. Lai, 2021 SCC 52

**APPEAL HEARD:** December 8, 2021

**JUDGMENT RENDERED:** December 8,  
2021

**DOCKET:** 39577

**BETWEEN:**

**Alan Teck Meng Lai**  
Appellant

and

**Her Majesty The Queen**  
Respondent

**CORAM:** Wagner C.J. and Moldaver, Karakatsanis, Côté, Brown, Rowe, Martin, Kasirer and Jamal JJ.

**JUDGMENT READ**

**BY:** Moldaver J.  
(paras. 1 to 5)

**MAJORITY:** Wagner C.J. and Moldaver, Karakatsanis, Brown, Rowe, Martin, Kasirer and Jamal JJ.

**DISSENT:** Côté J.

**NOTE:** This document is subject to editorial revision before its reproduction in final form in the *Canada Supreme Court Reports*.

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**Alan Teck Meng Lai**

*Appellant*

v.

**Her Majesty The Queen**

*Respondent*

**Indexed as: R. v. Lai**

**2021 SCC 52**

File No.: 39577.

2021: December 8.

Present: Wagner C.J. and Moldaver, Karakatsanis, Côté, Brown, Rowe, Martin, Kasirer and Jamal JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

*Constitutional law — Charter of Rights — Right to be tried within reasonable time — Transitional exceptional circumstance — Assessment of delay caused by re-election as of right of another mode of trial — Accused applying for stay of proceedings on basis that right to be tried within reasonable time guaranteed by s. 11(b) of Canadian Charter of Rights and Freedoms infringed — Trial judge finding that total delay exceeded Jordan ceiling but was justified by parties' reliance on state*

*of law pre-Jordan and dismissing application — Accused convicted of sexual assault causing bodily harm and administering stupefying drug — Majority of Court of Appeal concluding that trial judge erroneously characterized and deducted as discrete exceptional circumstance delay occasioned by accused's re-election of another mode of trial that caused loss of trial date but upholding dismissal of stay application on basis of transitional exceptional circumstance — Convictions upheld.*

### **Cases Cited**

**Referred to:** *R. v. Cody*, 2017 SCC 31, [2017] 1 S.C.R. 659.

APPEAL from a judgment of the British Columbia Court of Appeal (Newbury, Willcock and Butler JJ.A.), [2021 BCCA 105](#), 402 C.C.C. (3d) 1, 466 D.L.R. (4th) 421, 482 C.R.R. (2d) 315, [2021] B.C.J. No. 441 (QL), 2021 CarswellBC 642 (WL), affirming the convictions entered by Schultes J., 2018 BCSC 1838, [2018] B.C.J. No. 3499 (QL), 2018 CarswellBC 2877 (WL). Appeal dismissed, Côté J. dissenting.

*Eric Purtzki and Michael Sobkin*, for the appellant.

*Lauren A. Chu and Lesley A. Ruzicka, Q.C.*, for the respondent.

The judgment of the Court was delivered orally by

[1] MOLDAVER J. — *R. v. Cody*, 2017 SCC 31, [2017] 1 S.C.R. 659, at para. 32, states as follows:

Defence conduct encompasses both substance and procedure — the decision to take a step, *as well as the manner in which it is conducted*, may attract scrutiny. To determine whether defence action is legitimately taken to respond to the charges, the circumstances surrounding the action or conduct may therefore be considered. [Emphasis in original.]

[2] In this case, the appellant, Mr. Lai, had the statutory right to re-elect when he did — but he waited 15 months to re-elect after his trial dates were set in Provincial Court. This was despite being informed by Crown counsel that he could preserve his trial dates by re-electing earlier. Nonetheless, he waited 7 months after that warning to exercise his right to re-elect. This conduct had the direct result of losing the trial dates that were set in Provincial Court and causing an additional delay of 13 months.

[3] The trial judge rejected Mr. Lai's explanation regarding the re-election (2018 BCSC 867). Based on the trial judge's own findings and conclusions, the re-election was not done legitimately to respond to the charges. To that extent, the trial judge erred in not characterizing the delay as defence delay and deducting it as such.

[4] For these reasons, a majority of the Court would dismiss the appeal.

[5] Justice Côté is dissenting. She would have allowed the appeal substantially for the reasons of Butler J.A.

*Judgment accordingly.*

*Solicitors for the appellant: Melville Law Chambers, Vancouver; Michael Sobkin, Ottawa.*

*Solicitor for the respondent: Attorney General of British Columbia, Vancouver.*